

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CARBONE'S FINE FOODS AND WINES LLC,

Plaintiff,

V.

CARBONE RESTAURANT LLC,
CARBONE FINE FOOD LLC,
THE MAJOR FOOD GROUP LLC, and
MAJOR INTELLECTUAL LLC,

Defendants et. al.

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Case No. 3:22-cv-01184-E

**DECLARATION OF DANIEL JULIAN BARSOTTI IN SUPPORT OF CARBONE’S
FIRST AMENDED COMPLAINT**

1. My name is Daniel Julian Barsotti. I am over 18 years of age, of sound mind, have not been convicted of a felony, and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I am the owner and chef of Carbone's Fine Food & Wine ("Carbone's Dallas"). I am authorized to execute this declaration on behalf of Carbone's Dallas.

3. Carbone's Dallas first began using the Carbone's mark to identify its restaurant services in early 2011. The initial plan was to open Carbone's in late 2011, and based on that anticipated opening date, Jonathan Neitzel and I made consistent and continuous efforts to promote the Carbone's restaurant so that restaurant patrons in Texas would associate the name "Carbone's" with the new restaurant before it opened to the public. As a result, the use of the

Carbone's mark was consistent and continuous throughout 2011. By way of example, throughout 2011, Mr. Neitzel and I actively and routinely spoke with customers at Nonna, another restaurant that I own and operate in Dallas, Texas, to tell them of the plans to open Carbone's. We also spoke to staff and potential investors to tell them about Carbone's. I also used the Carbone's name in commerce via the process of getting the requisite permits and funding necessary to open a restaurant. In 2011, I spoke to dozens of individuals from major media outlets so I could spread the word about Carbone's, including Leslie Brenner of the Dallas Morning News and Nancy Nichols of D Magazine. As word got around, the opening of Carbone's became highly anticipated in Dallas, Texas. In spring of 2011, prior to signing the lease for the 4208 Oak Lawn Avenue location, we were disseminating investment materials and actively trying to raise capital for Carbone's. By the Summer of 2011, and throughout the Fall of that year, Carbone's prominently displayed a temporary sign with Carbone's name and logo until our permanent sign went up.

4. On April 17, 2012, Carbone's Dallas officially opened.

5. Carbone's Dallas has also been referred to and marketed as Carbone's. Since then, Carbone's Dallas has been in the business of providing quality Italian food by full-service restaurant dining, to-go food and wine sales, and pre-packaged sauces and foods. Carbone's Dallas' use of the Mark has been in consistent and continuous ever since and is a popular ongoing concern.

6. Since its opening in 2012, a set of black and white photos have hung on the wall that document the history of the Carbone's Dallas mark. Carbone's Dallas was a long-standing restaurant that existed originally in New York City then in New Jersey from 1941 to 1994 that was founded and operated by my grandfather, Angelo Carbone. True and correct copies of photos of Carbone's sign from the 1970s (on the right) and present day (on the left) are shown below

and are attached hereto as **Exhibit 1**:



7. Carbone's Dallas has continued to serve customers throughout many areas of Texas. We frequently receive calls from consumers all over Texas asking to eat at Carbone's Dallas and/or order our prepackaged food despite residing hours away. As such, Carbone's Dallas has considered and attempted to expand Carbone's into additional locations throughout Texas. At one point, Carbone's was in the final stages of signing a lease in Houston, Texas and had plans to open a restaurant out of Legacy West in Plano, Texas.

8. Carbone's Dallas still has plans to expand throughout the state of Texas.

9. Until Defendant's entry into the Texas market in or around 2022, Carbone's Dallas was the exclusive user of the CARBONE'S mark for ready-made and pre-packaged food in Texas.

10. Defendant has begun marketing, offering for sale, and selling pre-packaged food in the form of pasta sauce in the Dallas area.

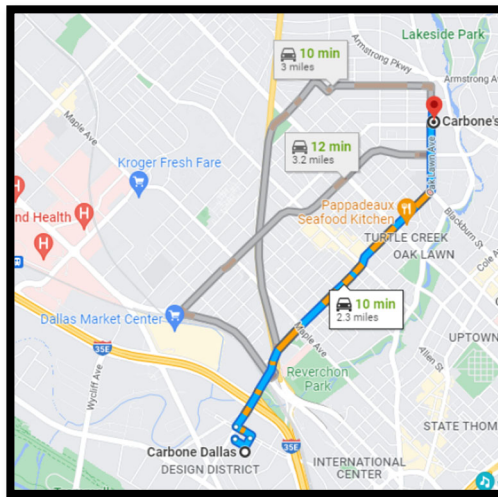
11. On March 2, 2022, Carbone's Dallas' investor, Karen Hixon, walked into Central Market on 5750 E Lovers Ln, Dallas, TX 75206, and saw the CARBONE'S mark being used to advertise the sale of retail pasta sauces. Seeing the CARBONE'S mark and logo, and unaware that Carbone's Dallas had launched a new pasta sauce line for sale at Central Market grocery stores, she took a photograph of the display and forwarded it to me. I had to correct Karen Hixon's confusion. I confirmed the marks and logos belonged to Carbone's Dallas, but that the retail pasta sauces were the Defendant's product being sold at Central Market and infringing on the CARBONE's mark. A true and correct copy of that photo taken by Karen Hixon is shown below and attached hereto as **Exhibit 2**.



12. The competing Carbone restaurant by Major Food Group (“Carbone MFG”) is not only serving the same type of cuisine as Carbone’s Dallas (Italian), but the location of the Carbone MFG restaurant is on Oak Lawn, on the same side of the street in Dallas—a mere 2.3 miles from Carbone’s Dallas. True and correct copies of a photograph taken of Carbone MFG’s sign on Oak Lawn is shown below and attached hereto as **Exhibit 3**.



13. A true and correct copy of a map displaying the distance between the two restaurants as 2.3 miles from Google Maps is shown below and attached hereto as **Exhibit 4**.



14. Carbone's Dallas received an account invoice for Carbone MFG's food establishment permit from the City of Dallas Department of Code Compliance. A true and correct copy of a photograph showing that invoice is shown below and attached hereto as **Exhibit 5**:

CITY OF DALLAS
 DEPARTMENT OF CODE COMPLIANCE
 CONSUMER HEALTH DIVISION
 1901 DOWORTH RD
 DALLAS, TX 75216 214-672-8083

ACCOUNT INVOICE FOR FOOD ESTABLISHMENT PERMIT

TO: 007
 CAFE CARBONE LLC
 CAFE CARBONE LLC
 4002 DALLAS AVE
 DALLAS, TX 75219

FROM: CAFE CARBONE LLC
 RE: CAFE CARBONE
 1817 IN LINE ON #380 75207

Account ID: **AM000008**
 Date: **5/10/2021**
 Family ID: **RAM00007**

PLEASE RETURN ONE STATEMENT WITH YOUR PAYMENT

Date	Description	Amount
	PERMIT FEE	\$111.00

Invoice #IN0196450238 - Date of Invoice: 5/10/2021 - FIRST NOTICE - *IN0196450238.50*

PAYMENT: DCA
 DUE IMMEDIATELY

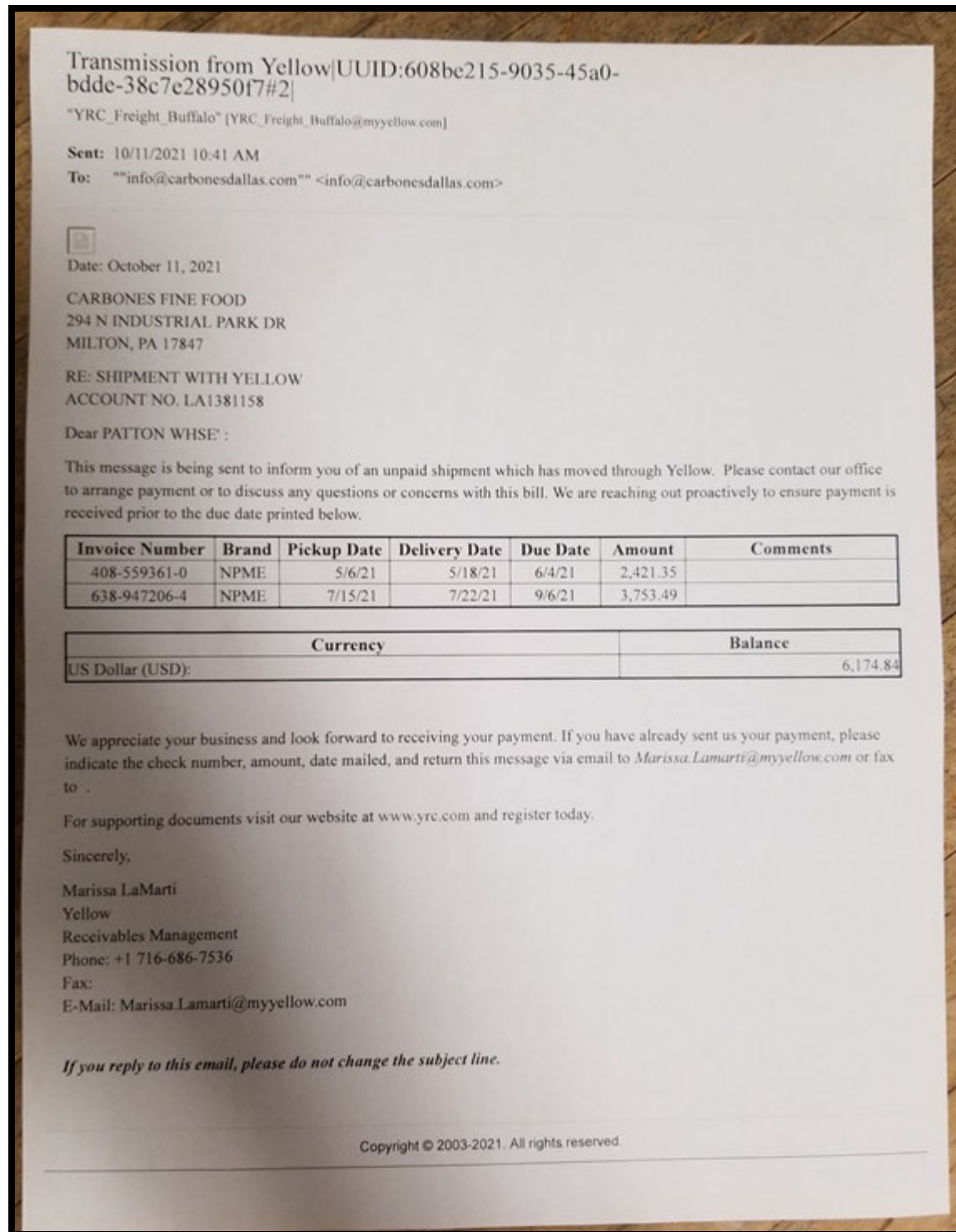
PTSDOWN'S CAFE CARBONE - RESTAURANT/TAVERN 2001 + SQ. FT. - Risk Category: 8 - 238.50

Invoice Total: 238.50
 Amount Total: 238.50

Failure TO PAY THE ANNUAL HEALTH PERMIT FEE ON OR BEFORE THE DUE will result in an additional \$111 PERMIT REINSTATEMENT FEE.
 Failure to remit payment could also result in an additional pre-closure fee of \$67 and citation.
 *Indicates that the amount charged is a prorated annual fee to reflect the establishment's partial year of operation.


Page 1 of 1

15. On October 11, 2021, Carbone's Dallas received a shipping invoice from Marissa.Larmarti@myyellow.com that was intended for Carbone MFG. A true and correct copy of a photograph displaying that shipping invoice is shown below and attached hereto as **Exhibit 6**:



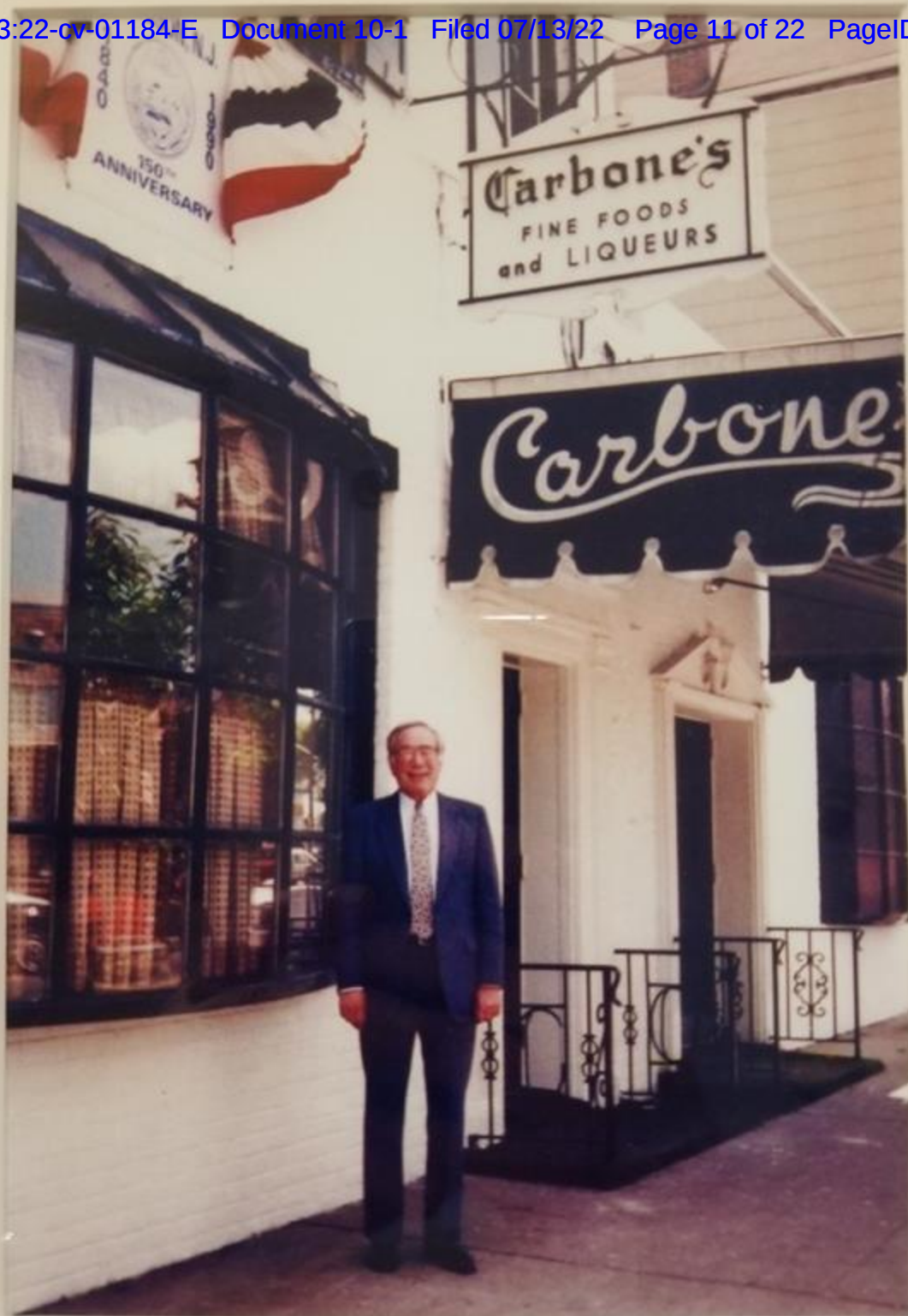
16. As a result of Defendant's activities and the impairment to Plaintiff's goodwill, reputation and customer base, Plaintiff has been and will continue to be irreparably damaged by such acts in the future.

My name is Daniel Julian Barsotti, my date of birth is June 25, 1980, and my address is 3206 Drexel Drive, Dallas, Texas 75205. I declare under penalty of perjury that the foregoing is true and correct. Executed in Dallas County, State of Texas, on the 8th day of July, 2022.



JULIAN BARSOTTI

EXHIBIT 1



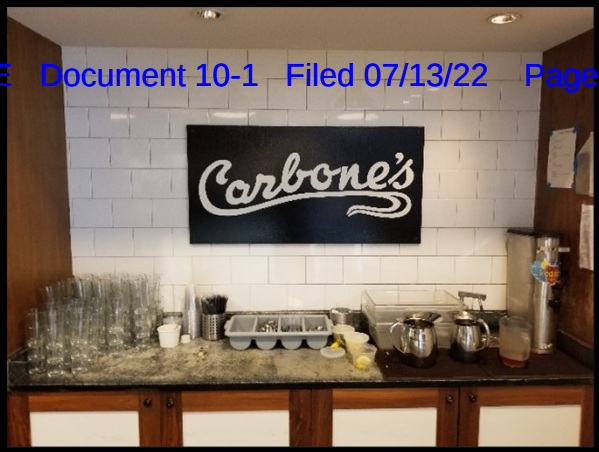


EXHIBIT 2



Carbone's Fine Food and Wine
is an Italian American restaurant
& grocery located in Dallas, Texas.



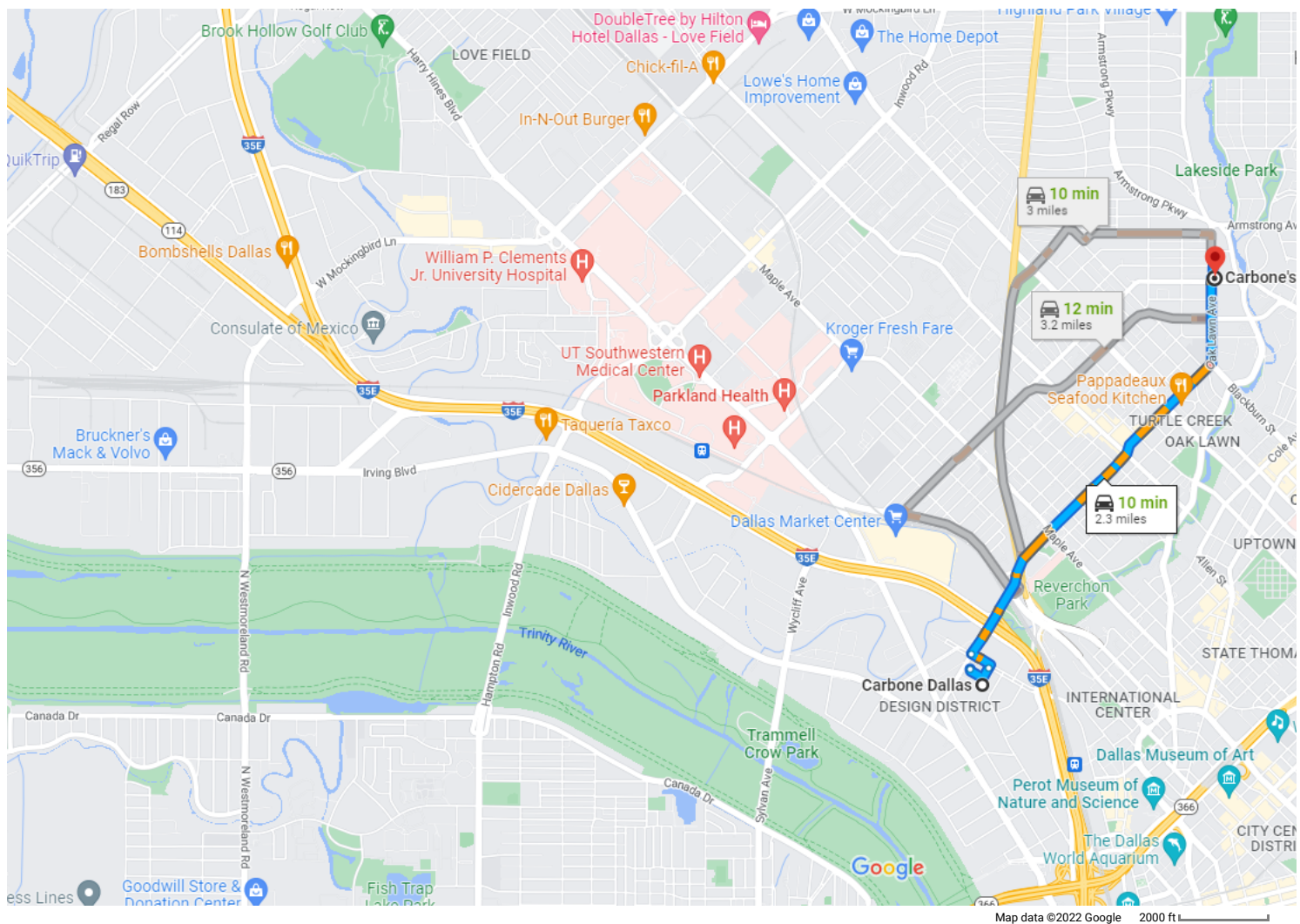
Our goal is to celebrate Italian American
food traditions. Our commitment is to
make as many products as possible in
house and source from artisan American
producers.



EXHIBIT 3



EXHIBIT 4



- via Oak Lawn Ave

Best route, lighter traffic than usual

10 min

2.3 miles
- via Dallas North Tollway N

10 min

3.0 miles
- via Wycliff Ave

12 min

3.2 miles

Explore Carbone's

Restaurants Hotels Gas stations Parking Lots More

EXHIBIT 5

CITY OF DALLAS
DEPARTMENT OF CODE COMPLIANCE
CONSUMER HEALTH DIVISION
7901 GOFORTH RD
DALLAS, TX 75238 214-670-8083

ACCOUNT INVOICE FOR FOOD ESTABLISHMENT PERMIT

TO: 007
CAFE CARBONE LLC
CAFE CARBONE LLC
4208 OAKLAWN AVE
DALLAS, TX 75219

Account ID
AR0025805

Date
5/10/2021

Facility ID
FA0020227

ATTN: CAFE CARBONE LLC

RE: CAFE CARBONE
1617 HI LINE DR #390 75207

PLEASE RETURN ONE STATEMENT WITH YOUR PAYMENT

Failure TO PAY THE ANNUAL HEALTH PERMIT FEE ON OR BEFORE THE DUE will result in an additional \$111 PERMIT REINSTATEMENT FEE.
Failure to remit payment could also result in an additional pre-closure fee of \$87 and citation.

Date	Program/ Element	Description	Amount
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Invoice #IN0196450 --- Date of Invoice : 4/1/2021 FIRST NOTICE

IN0196450238.50

04/01/21	540A	PT0024415 CAFE CARBONE - RESTAURANT/TAVERN 2001 > SQ. FT. - Risk Category 3	\$	238.50 *
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DUE IMMEDIATELY

Your Account's Information As of 5/10/2021

Invoice Total:	238.50
Account Total:	238.50

Failure TO PAY THE ANNUAL HEALTH PERMIT FEE ON OR BEFORE THE DUE will result in an additional \$111 PERMIT REINSTATEMENT FEE.

Failure to remit payment could also result in an additional pre-closure fee of \$87 and citation.

*Indicates that the amount charged is a prorated annual fee to reflect the establishment's partial year of operation.

EXHIBIT 6

Transmission from Yellow|UUID:608be215-9035-45a0-bdde-38c7e28950f7#2|

"YRC_Freight_Buffalo" [YRC_Freight_Buffalo@myyellow.com]

Sent: 10/11/2021 10:41 AM

To: ""info@carbonesdallas.com"" <info@carbonesdallas.com>



Date: October 11, 2021

CARBONES FINE FOOD
294 N INDUSTRIAL PARK DR
MILTON, PA 17847

RE: SHIPMENT WITH YELLOW
ACCOUNT NO. LA1381158

Dear PATTON WHSE' :

This message is being sent to inform you of an unpaid shipment which has moved through Yellow. Please contact our office to arrange payment or to discuss any questions or concerns with this bill. We are reaching out proactively to ensure payment is received prior to the due date printed below.

Invoice Number	Brand	Pickup Date	Delivery Date	Due Date	Amount	Comments
408-559361-0	NPME	5/6/21	5/18/21	6/4/21	2,421.35	
638-947206-4	NPME	7/15/21	7/22/21	9/6/21	3,753.49	

Currency	Balance
US Dollar (USD):	6,174.84

We appreciate your business and look forward to receiving your payment. If you have already sent us your payment, please indicate the check number, amount, date mailed, and return this message via email to Marissa.Lamarti@myyellow.com or fax to .

For supporting documents visit our website at www.yrc.com and register today.

Sincerely,

Marissa LaMarti
Yellow
Receivables Management
Phone: +1 716-686-7536
Fax:
E-Mail: Marissa.Lamarti@myyellow.com

If you reply to this email, please do not change the subject line.